

**AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO  
MECHANICSVILLE CONCRETE, INCORPORATED  
Permit No. 51959**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Mechanicsville Concrete, Incorporated, for the purpose of resolving certain violations of environmental law and/or regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.

6. “Mechanicsville Concrete” means Mechanicsville Concrete, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the Mechanicsville Concrete, Incorporated located at 2430 Batterson Road, Powhatan, County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Construct and Operate Permit, which became effective September 21, 2001.
10. “O&M” means operations and maintenance.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mechanicsville Concrete owns and operates a Concrete Batch Plant in Powhatan County, Virginia. This facility is the subject of a Construct and Operate permit issued on September 21, 2001.
2. On September 11, 2001, an air inspection was performed. At the time of this inspection the facility was loading the Cement Silo and was in operation prior to the September 21, 2001 permit issuance date. 9 VAC 5-80-10 (C)(1) states: “No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source: (a) any stationary source”.
3. Permit condition number 8 requires the process/control monitoring device used to continuously measure the differential pressure drop across the fabric filter be observed by the permittee with a frequency of not less than once per day. The permittee shall continuously record measurements from the process/control monitoring device. On August 20, 2002, a Full Compliance Evaluation was performed at the Facility. The log entries for the once per day reading of the pressure drop were incomplete. The plant operated on 08/17/02, 08/18/02, and 08/19/02 no log entries were made for these dates.
4. Permit condition number 16 require the permittee to furnish written notification to the director, Piedmont Region of (a). The actual date on which construction of the equipment as listed in Condition 2 for the MG-11T Concrete Batch Plant commenced within 10 days after such date. (b) The actual start-up date of the equipment as listed in Condition 2 for the MG-11T Concrete Batch Plant within 15 days after such date. A request was sent to the Facility on September 3, 2002,

requesting additional information. A phone call was received from the facility indicating that the documents had not been submitted.

5. According to production information submitted by the facility to DEQ on 08/16/02, the production from Sept. 2001 through July 2002 was 44,386 cubic yards. During this 11-month period the facility exceeded its allowable production of 40,000 cubic yards. Condition #9 – Production – the production of concrete shall not exceed 60 tons per hour (30 cubic yards per hour) or 80,000 tons per year (40,000 cubic yards per year), calculated monthly as the sum of each consecutive 12 month period.
6. Permit condition number 23 requires the permittee to take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment, monitoring devices, and process equipment which affect such emissions: (a) Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance. Department records indicate that the Facility does have written maintenance schedules and they maintain records, however, no maintenance activities had been logged for 2002.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Mechanicsville Concrete, and Mechanicsville Concrete voluntarily agrees, to pay a civil charge of \$15,400.00 within 30 days of the effective date of the Order in settlement of the violation cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Payment shall include the Federal Tax Identification Number for the Facility.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mechanicsville Concrete, for good cause shown by Mechanicsville Concrete, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violation specifically identified herein, including those matters addressed in the Notice of Violation issued to Mechanicsville Concrete by DEQ on September 12, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law,

including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Mechanicsville Concrete admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mechanicsville Concrete consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mechanicsville Concrete declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mechanicsville Concrete to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mechanicsville Concrete shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mechanicsville Concrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mechanicsville Concrete shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Mechanicsville Concrete. Notwithstanding the foregoing, Mechanicsville Concrete agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mechanicsville Concrete. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mechanicsville Concrete from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Mechanicsville Concrete voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Mechanicsville Concrete voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_  
John Boston  
Secretary

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Mechanicsville Concrete, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.